

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROWDY ROUTON)	
Claimant)	
VS.)	
)	Docket No. 199,702
SUBLETTE FEEDERS)	
Respondent)	
AND)	
)	
CONTINENTAL WESTERN INSURANCE COMPANY))	
Insurance Carrier)	

ORDER

Claimant appealed the November 7, 2000 Decision entered by Administrative Law Judge Pamela J. Fuller. The Board heard oral argument on May 2, 2001.

APPEARANCES

Gary E. Patterson of Wichita, Kansas, appeared for claimant. James M. McVay of Great Bend, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Decision. Additionally, on May 14, 2001, the parties filed a stipulation with the Board that respondent and its insurance carrier paid claimant temporary total disability benefits totaling \$10,911.96 at the rate of \$303.11 per week.

ISSUES

This is a claim for a December 28, 1994 accident and resulting injury to the right leg. Claimant developed an infection in the injured leg and in April 1995 underwent a skin graft. Over the 34 months following the skin graft, claimant experienced a series of abscesses and lesions, which ultimately led to his right leg being amputated. Respondent and its insurance carrier do not contest the December 28, 1994 accident or the original leg injury. But they do contest claimant's contentions that the amputation is related to the December

1994 accident. They contend that claimant injected himself in the leg, which then caused the abscesses and lesions that led to the amputation.

In the November 7, 2000 Decision, Judge Fuller found that the amputation was not caused by the December 1994 accident and awarded claimant permanent partial disability benefits for a seven percent functional impairment to the right lower extremity. The Judge also awarded claimant medical benefits for the treatment administered through June 21, 1995, the date that claimant was examined for purposes of determining a functional impairment rating by the physician who performed the April 1995 skin graft.

Claimant contends Judge Fuller erred. Claimant argues that he should be compensated for the right leg amputation. Claimant argues that there is neither direct evidence that he injected himself, nor evidence that self-injection caused the amputation. Therefore, claimant requests an award for an 80 percent permanent partial disability to the right lower extremity and for all the medical treatment administered to that limb. Claimant also requests the Board to review whether the Judge credited the proper amount of temporary total disability benefits in the Decision.

Conversely, respondent and its insurance carrier contend the Decision should be affirmed.

At oral argument before the Board, the parties agreed that claimant would be entitled to receive an 80 percent permanent partial disability to the lower extremity in the event the amputation was directly related to the December 1994 accident and a seven percent permanent partial disability to the lower extremity in the event the amputation was not related.

The issues before the Board on this appeal are:

1. What impairment did claimant sustain as a result of the December 1994 accident?
2. Are respondent and its insurance carrier responsible for any of the medical treatment rendered claimant after June 21, 1995?
3. Did the Judge err in determining the amount of temporary total disability benefits that should be credited against the final award?
4. Is claimant entitled to future medical benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

1. The Decision should be modified as respondent and its insurance carrier are responsible for the medical expenses claimant incurred from September 1995 through November 6, 1995, for treatment to his leg. The Board affirms the Judge's finding that claimant is entitled to receive benefits for a seven percent permanent partial disability to the right lower extremity. The Board concludes that the evidence fails to prove that the right leg amputation was directly related to the December 1994 accident. Finally, respondent and its insurance carrier are entitled to a credit against the award in the sum of \$10,911.96 because of the previous payment of temporary total disability benefits.

2. The parties stipulated that claimant injured his right leg on December 28, 1994, while working for respondent. On that date, claimant and his horse slammed into a post, which caused the horse to flip on top of claimant, pinning claimant's right leg to the ground. Claimant was immediately taken to the hospital and treated for a contusion to the right calf. X-rays indicated that there were no fractures.

3. Approximately one month later, claimant developed cellulitis and an infection from a hematoma and was admitted to the hospital. Claimant then began a round of treatment that ultimately resulted in a skin graft to the wounded area of his calf. By mid-April 1995, the skin graft had taken quite well and the wound displayed no evidence of infection. On June 21, 1995, Dr. Zeferino Arroyo, the physician who began treating claimant in February 1995 and who performed the skin graft, examined claimant and determined that he had a seven percent functional impairment to the right lower extremity.

4. Sometime after June 1995, claimant developed additional problems in the area of his wound. In mid-September 1995, claimant was admitted to a hospital in Tucumcari, New Mexico, with an abscess and cellulitis in the right leg. After a week's stay in the hospital, claimant was discharged on crutches only to be re-admitted approximately 10 days later. Claimant then began receiving treatment from Dr. Richard Franklin, among others. In October 1995, Dr. Franklin performed a series of surgeries in which he removed necrotizing tissue. When the doctor released claimant after the October 1995 surgeries, claimant's wound was healing. But in mid-November 1995, claimant returned to Dr. Franklin with recurring necrotic tissue around the wound and began another round of medical treatment.

5. Dr. Franklin strongly believes claimant's condition during the October 1995 round of treatment was caused by a foreign body reaction to pieces of cotton or hair that had been left in the wound from either a prior surgery or a prior packing. Therefore, the doctor relates the treatment through November 6, 1995,¹ to the December 1994 accident. Based upon that evidence, the Board finds and concludes that the treatment rendered claimant

¹ The November 6, 1995 date is chosen as that appears to be claimant's last follow-up visit with Dr. Franklin following the October 1995 surgeries, which the doctor related to the original accident and resulting hematoma.

from September through November 6, 1995, is directly related to the December 1994 accident and, therefore, should be paid by respondent and its insurance carrier.

6. But Dr. Franklin cannot relate the medical treatment provided after October 1995 to claimant's December 1994 accident. When claimant sought additional treatment from the doctor in mid-November 1995, Dr. Franklin could not explain why the tissue was dying in and around claimant's wound. But in early April 1996, claimant's doctors found a pin point wound with pus in claimant's leg, which prompted a search of claimant's hospital room. Dr. Douglass Hyde discovered syringes in claimant's hospital room and removed them. Once the needles were removed, claimant's wound improved. Dr. Franklin had no opinion about claimant's leg problems after October 1995, except that it made sense that claimant was self-injecting his leg. But Dr. Hyde's opinion was much stronger as he believed that claimant's ongoing leg problems were caused by either self-injecting or placing foreign material in the wound.

7. Other physicians also testified that claimant's ongoing problems with his leg were more probably caused by an outside source such as self-injection rather than caused by an infection stemming from the December 1994 accident. The strongest evidence that claimant presented to relate the amputation to the December 1994 accident was from Dr. Laura Mitchell, the doctor who amputated claimant's leg. But her opinions were premised upon the false assumption and history that claimant fractured his leg in the December 1994 accident.

8. The Board concludes that claimant has failed to prove that the right leg amputation was directly related to the December 28, 1994 accident and resulting injury. Conversely, the greater weight of the evidence indicates that after November 6, 1995, claimant's leg problems were more probably due to either claimant's self-injecting or some other source unrelated to the December 1994 accident and the resulting injury. Additionally, the record fails to prove that any medical treatment rendered after November 6, 1995, was related to the December 1994 accident. Therefore, claimant is entitled to receive benefits for a seven percent permanent partial disability to the right lower extremity. Further, respondent and its insurance carrier are responsible for claimant's medical treatment through November 6, 1995.

9. According to the parties' stipulation, respondent and its insurance carrier paid a total of \$10,911.96 in temporary total disability benefits in this claim. Therefore, respondent and its insurance carrier are entitled to a credit in that sum against the total amount of disability benefits due under this Order.

10. Claimant's present request for future medical benefits is denied as the evidence fails to establish that the amputation was directly related to the December 1994 accident.

11. The Board adopts the findings and conclusions set forth in the Decision to the extent that they are not inconsistent with the above.

AWARD

WHEREFORE, the Board modifies the November 7, 2000 Decision and orders respondent and its insurance carrier to pay claimant's medical expenses for his right leg that were incurred through November 6, 1995. The Board affirms the award for benefits for a seven percent permanent partial disability to the right lower extremity.

Rowdy Routon is granted compensation from Sublette Feeders and its insurance carrier for a December 28, 1994 accident and resulting disability. Based upon an average weekly wage of \$350, Mr. Routon is entitled to receive 36 weeks of temporary total disability benefits at \$233.35 per week, or \$8,400.60, plus 11.48 weeks of permanent partial disability benefits at \$233.35 per week, or \$2,678.86, for a seven percent permanent partial disability to the right lower extremity, making a total award of \$11,079.46, which is all due and owing less any amounts previously paid.

The Board adopts the remaining orders set forth in the Decision that are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of June 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Gary E. Patterson, Wichita, KS
Michael Snider, Wichita, KS
Michael V. Madden, Wichita, KS
Gerard C. Scott, Wichita, KS
James M. McVay, Great Bend, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director